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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,807	03/04/2002	Paul A. Christian	08935-255001	1600
26163	7590	10/19/2005	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022		MERCADO, JULIAN A		
		ART UNIT		PAPER NUMBER
		1745		

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/086,807	CHRISTIAN ET AL.
	Examiner	Art Unit
	Julian Mercado	1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04 August 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10, 12-21, 29-40 and 66-74 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) _____ is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

Remarks

This Office action is responsive to applicant's amendment filed August 4, 2005.

Claim Rejections - 35 USC § 112

The rejection of claims 1-21, 29-40 and 66-70 under 35 U.S.C. 112, second paragraph has been obviated.

Claim Rejections - 35 USC § 102

The prior art rejection based on Megahed et al. under 35 U.S.C. 102(b) has been withdrawn in favor of a rejection under 35 U.S.C. 103(a) based on the same, discussed below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-10, 13, 14, 16, 29, 30, 32-40, 66-70 and 72-74 are rejected under 35 U.S.C. 102(b) as being anticipated by Megahed et al. (U.S. Pat. 3,911,094) in view of Maruta (JP 10-284075).

The rejection is maintained for the reasons of record as previously discussed in detail in the prior Office action under the 35 U.S.C. 102(b) section. The examiner notes that the claims have been amended to recite contacting the dry mixture with humidified ozone to form nickel oxyhydroxide. (emphasis in original)

As discussed in the prior Office action, Megahed et al. prepares nickel oxyhydroxide by reacting a dry mixture of nickel hydrate and a hydroxide salt with ozone. While Megahed et al. does not explicitly teach humidified ozone, Maruta teaches dispersing, i.e. contacting nickel hydroxide powder in a sodium hydroxide solution while passing into the suspension a mixed gas of oxygen and ozone. (Abstract, see also par. [0010]) Thus, the ozone gas is resultantly humidified. The skilled artisan would find obvious to modify Megahed et al.'s invention by employing the teachings of Maruta for reasons such as obtaining a nickel oxyhydroxide powder having high purity. (ib.)

Claims 7, 17 and 71 are rejected under 35 U.S.C. 103(a) as obvious over Megahed et al. in view of Maruta, and further in view of Jackovitz et al. (U.S. Pat. 4,481,128).

The rejection is maintained for the reasons of record as previously discussed in detail in the prior Office action under the 35 U.S.C. 103(a) section. The combined teachings of Megahed et al. in view of Maruta are discussed above and are incorporated herein by reference.

As discussed in the prior Office action, the examiner maintains that temperatures of 20°C to 50°C are effective heating temperatures for ozonation as specifically taught by Jackovitz et al., absent of a showing by applicant that a specific heating temperature range has unexpected results.

As discussed in the prior Office action, the examiner maintains that the skilled artisan would find obvious to include cobalt oxyhydroxide in Megahed et al.'s invention for reasons such as providing a high performance positive electrode plate. (see Jackovitz et al. in col. 4 line 37-53)

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Megahed et al. Megahed et al. in view of Maruta, and further in view of Köhler (U.S. Pat. 5,800,947).

The rejection is maintained for the reasons of record as previously discussed in detail in the prior Office action under the 35 U.S.C. 103(a) section. The combined teachings of Megahed et al. in view of Maruta are discussed above and are incorporated herein by reference.

As discussed in the prior Office action, the examiner maintains that it would have been obvious to one of ordinary skill in the art to employ spherical particles for reasons such as achieving a high packing density and resulting high capacity per unit volume. (see Köhler et al. in col. 3 line 31 et seq.)

Claims 15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Megahed et al. in view of Maruta, and further in view of Kodama et al. (JP 2001-202956).

The rejection is maintained for the reasons of record as previously discussed in detail in the prior Office action under the 35 U.S.C. 103(a) section. The combined teachings of Megahed et al. in view of Maruta are discussed above and are incorporated herein by reference.

As discussed in the prior Office action, the examiner maintains that the skilled artisan would find obvious to add gold hydroxide as an oxidation promoting additive for reasons such as

attaining a high charging efficiency and maintaining a high-rate discharge property. (see Kodama et al., par. [0006])

Claims 20, 21 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Megahed et al. in view of Maruta, and further in view of Ikoma et al. (U.S. Pat. 5,700,596).

The rejection is maintained for the reasons of record as previously discussed in detail in the prior Office action under the 35 U.S.C. 103(a) section. The combined teachings of Megahed et al. in view of Maruta are discussed above and are incorporated herein by reference.

As discussed in the prior Office action, the examiner maintains that the skilled artisan would find obvious to employ a bulk dopant such as improved utilization of the formed battery. (see Ikoma et al. in col. 4 line 4-23)

Response to Arguments

Applicant's arguments filed with the present amendment have been fully considered, however they are not found persuasive.

As to Megahed et al. failing to disclose a humidified ozone mixture, while this argument may have merit the instant Office action now relies on Maruta to teach or suggest this feature for the reasons and motivations set forth above.

Applicant's arguments against the secondary references appear to be directed to these references failing to remedy alleged differences between the primary reference (Megahed et al.) and the present claims. However, in view Megahed et al. when taken in view of Maruta being maintained for the reasons discussed above, the rejection(s) in view of the secondary references is subsequently maintained for the reasons discussed in the previous Office action.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

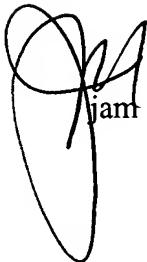
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



jam



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